TVVO CHARGES,

As they were delivered

By T. E. *Esquire, Justice of the Peace for the County of* Suffolke.

The one at *Easter* publick Quarter-Sessions of the peace, held at *Ipswich* in that County: On Friday, *April* the 6. 1649.

The other upon the opening or first Publick sitting upon the Commission of *Sewers*, at *Woodbridge* in the Liberty of St. *Etheldred* in the same County: On Wednesday, *Sept.* 5. 1649. before two substantiall Juries, good Freeholders & others of that County.

Wherein appeares

The necessity of GOVERNMENT, and of steps and degrees in it: And the duty and great trust in those in Publique imployment not to desert the present *GOVERNMENT.*

LONDON.

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M. DC. L.

Two Charges, as they were delivered by T.E. *Esq; a Justice of the Peace of the County of* Suff.

Gentlemen of the Grand Inquest,

THat Text from the mouth of God himself, namely, *It is not good for Man to be alone;* is a Primitive Precept, and needs no other argument to make society and humane Fellowship of Divine Right; howbeit we know it is the scope of the second Table, and at which it drives: This is therefore above the reach of reason or fancy to question; for the rule alwaies holds, that in Divine matters we are not to looke so much at what is commanded, as who it is that commands; not *quid*, but *quis*; not the thing, but the authority of the Commander; for it is, *summa ratio*, that mans reason should vaile Bonnet in all humility to the will of God, who gave him that reason: In humane or temporall things it is otherwise, for there where Gods will appeares not, reason rules; here we are not to consider the Commander so much, as the justnesse of the command, not so much *quis*, as *quid*, and to order our selves accordingly: This society and humane Fellowship consisting chiefly of Love and Charity, which is the fulfilling of the Law, is a principle of Religion, because God directs it, and Religion cannot be where this is not. *Lactantius* saith, that *Sola Religio est, que hominum inter se custodit societatem*; It is onely Religion that keepes and maintaines society among men: And for the preservation of this society, as Politicians say, were first private Families ordained, and so Townes and Cities, which in the way of lawfull order and government, with superioritie and subor-

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dinatie, makes a Common-wealth: And for this end are those two great Ordinances of God, Magistracy for distribution of Justice, and Civill right in the Common-weale, so much spoken of and insisted on in that 13th Chapter of the *Romanes*; and Ministery for dispensing of the Gospel of Peace in the Church, requisite. It hath not beene at any time among wise and rationall men asserted, but that Government and Governours are necessary, and there can be no Government without degree and order, which keepes us from confusion; One saies, that Degrees were staires of Gods fabricke in the Creation, and that there can be no order without degree, order being nothing else but differencing of degrees, and a right disposition of parity and disparity. *Job* 10. 22. *Before I goe hence, and shall be seene no more, even to the Land of darknesse, and shadow of death; into a Land, I say, darke as darknesse it selfe, and into the shadow of death, where there is no order*, namely, *Confusion*. And although Government be requisite both in Church and State, yet we see difference in judgement which is the best; in the Church, some for Episcopacy, others for Presbyterie of severall sorts, and some for Independency; in the Commonwealth, some for Monarchy, others for Aristocracy, as in *Venice*, where rule and power is placed in the hands of such in whom is conceived best life and manners; others for Oligarchy, as in severall places in *Sicilia*, when a few wise or rich men governe; Democracy, as in *Athens*, where the Free-men, the greater number were Lords of the State, and ordered all at a Common Hall, or Assembly, by Vote, and some others for a mixture of all or some of these. We reade, that *Ptolomy*, King of *Egypt*, in one day feasted seven Ambassadours of severall Common-wealthes, and of differing Governments, and desired them to instruct him in the best points necessary for preservation of a Common-wealth; The Ambassadours were, the *Roman*, *Carthaginian*, *Sicilian*, *Rhodian*, *Athenian*, *Lacedemonian* and *Siconian*, and they gave him severall answers relating to their respective Governments; but Government it selfe, and the right of it,

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was never yet questioned to be necessary by any wise or rationall man; for it is the Ship wherein the Common-wealth swimmes; and take this away, and it sinkes and ruines; and it behooves us, though never so meane, for safeguard of our selves and others, to keepe this Ship from sinking by upholding of and acting in Government, and the waies of it in our severall spheares, and not to neglect it. Gentlemen, I am but a bad Arithmetician, yet methinkes I can cast up this accompt, and all these particulars into this sum totall, that Government is of pure necessity, and that no Body Politique, or Naturall, can consist without it; and that as a hungry man necessitated, must not leave his meate because it is not so well dressed as he would have it; nor as the naked man must not leave his clothing because they are not so well made or shaped as he would have them: so, nay much more those in publique imployment in a Commonwealth, must not desert Government, because the way or forme doth not like them. Though one kinde of Government be better then another, yet take that is next rather then none, and to fall to their tackling; for although the course of nature in the body naturall, may endure some time of restraint, yet in the body politique, Justice and the strength of it, cannot one quarter of an houre be suspended; for by that small time of impunity of Offendors, the Murderer, the Thiefe, the Oppressor, &c. destroyes all; and we have incouragement that our succeeding Government will be good for the Parliament, the last Terme, did resolve and declare to maintaine the Fundamentall Lawes of this Land, as they did by that their Protestation and Vow in *May*, 1641. which they tooke themselves, and commended to all others to take; wherein they undertooke with their lives, powers and estates, to defend the lawfull Rights and Liberties of the Subject (which is the Law of the Land, the Peoples birth-right) and so have severall times since declared. Gentlemen, these are those Fundamentall Lawes which *William* the Conquerour either by agreement urged, or with the common equity of them being convinced, did notwithstanding his Conquest, yeild

to. Theſe are they that in the *Magna Charta*, or, Great Charter, made in the 9th yeare of *H.* 3. above 400 yeares ſince, are called the Liberties of *England*; and in the 20. of *H.*3. when the Pope deſired to change but one particular ground of thoſe Lawes, as great as then he was, the Parliament cried out, *Nolumus Leges Angliæ mutare.* And in the Book caſe of 8.*H.* 4.*fol.*19.it is ſaid, The King cannot put his Subjects from their inheritance which they have in the Common Lawes. And in 19.of *H.* 6.*fol.* 62. the Lawes of the Land are called, the high inheritance of the Kingdome, by which (ſaith the Booke) the King and People are guided. And that learned *Bracton*, ſeverall hundred yeares ſince, ſaid, *Rex debet eſſe ſub Deo & Lege, quia Lex facit Regem.* And in that old Statute of *Premunire*, made in 27. *E.* 3. againſt thoſe that ſue in forraigne Realmes: The words are theſe, *viz.* In deſtruction of the common Lawes of the Realm at all times uſed, not at or ſince the Conqueſt, but at all times uſed: Theſe Lawes, like truth, are very aged, yet very freſh and good, without wrinkles, and of full beauty and ſtrength, their age and duration ſhew the ſtrength of their conſtitution, for weake and abortive births are never found amongſt the workes of time; they have alwaies beene, and ſtill are the ſtrong eſtabliſhments of, our enjoyments of liberties, priviledges, and properties, --*Fundus à patre relinqui poteſt, at uſucapio fundi, quia finis eſt ſolicitudinis, non à patre relinquitur, ſed à legibus*: But I ſhall ſay no more in this ſo plaine a matter, leſt I have no better ſucceſſe then had the Ambaſſadours of the *Samians* at *Lacedemon*, who having made a long and tedious Speech of things eaſy to be delivered in few words, and not ſeeing their errour, but expecting a gratefull anſwer, had no other then this ſlighting, We have forgotten one part of your Ambaſſie, and the reſt we know not how well to underſtand: Or as that Orator being very long in ſpeech to *Ariſtotle*, deſired pardon for his prolixitie: to whom *Ariſtotle* replied, Friend, thou haſt no cauſe to aske me pardon, becauſe I took no heed to what thou ſayedſt. And now we have looked upon

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upon the Foundations or Grounds of Government, and the Lawes or Leſſons thereof, let us aime at and deſire the fruits and bleſſings of them, namely, Peace, and purſue it; and the way of it is the courſe of Juſtice; the benefit is ſo great, we cannot meaſure it; we are to ſearch for and finde out all Breakers and Breaches of the Peace, either directly or indirectly, by force or fraud, by ſtrength or ſtratagem: This is a Court of Seſſions of the Peace, ſo called, and we are all in a Judiciall or Miniſteriall way, Members of it; the Verſe is true, and pleaſant to us, *Nulla ſalus bello pacem te poſcimus omnes.* The Heathen Governours held it their duties not onely to uphold peace, but with their beſt indeavours to make and create it. I read that *Archedamus* King of the *Lacedemonians* had two of his great Nobles at jarres, which might indanger the Breach of the publique peace, and therefore he ſtudied how he might in a wiſe and juſt way make peace and friendſhip between them; and becauſe he conceived the juſt deciſion hard (although they had referred themſelves unto him) would not judge the matter leſt he might erre in judgment and ſo make the difference wider and harder to reconcile; and therefore, ordered them to meet him in the *Temple:* and there, againe, they ſubmitting to his order & award, he ordered, that they ſhould not depart out of it till they had agreed between themſelves, and ſworn friendſhip each to other. A faire light to us Chriſtians, who are further ingaged that way than any Heathen for love to our Neighbour; the mother of peace is a principle of our purity and Religion. Saint *Ambroſe* hath obſerved, That Grace and Peace were never uſed in greetings before Chriſt's comming; and ſince, they are become ſiſters and companions. Now Gentlemen, as in the body naturall, diſeaſed and corrupt members or joynts diſquiet the body, and the peace of it, and ought to be cured or cut off; and for that purpoſe is the Phyſician and Chirurgion requiſite; ſo in the body politique, the peace of that cannot be ſure or ſolid but by taking away or curing the deſtructive and cor-

rupt members thereof; and for that purpose is Magistracy and the dependants of it. And now the Gentlemen of the Bench, and you of the Grand Inquest at the Barre, this way are to employ your selves. And as you are to regard the publique peace as to the matter, so you ought to further it in the manner; namely, by, and not against the course of Law, which is the lessen of Justice: It is now time to shew and poynt out these maladies & putrifactions in the Common wealth, and to which it is subject, and those are the particulars of your charge; and they in the generall consist chiefly in offences against the first Table, things that are or tend against the Divine honour and worship of God; And also offences against the second Table, in breach of justice, love, and charity towards men: And so I shall descend to the particulars: And first, to those which tend nigheſt to or towards the dishonour of God and against his worship, the duties of the first Table, and are as followeth, *viz:* you are to enquire if any within a Yeare & a day have depraved, despised or contemned the Sacrament of the body & blood of our Lord & Saviour Jesus Christ, either by word or otherwise, they are to be imprisoned, fined, and ransomed. You are to enquire of all that neglect the Church on the Lords day, a time and place set apart for the divine honour and worship of God, punishment is to be except there be a reasonable excuse: The default for a day is 12d. for a month 20l. You are to enquire if any by writing, cyphering, printing, preaching or teaching, deed or act, extoll or set forth willingly the authority of the Bishop of *Rome*, or his See; the Party, his Abetters, Ayders or Comforters, shall be indicted within a yeare after the offence, and shall incurre a premunire, and the punishment thereof, as is mentioned in the Statute of 16 *Ric.* 2. *cap.* 5. *viz:* out of the protection of the Law, his lands forfeit, and his body to be attached, &c. If any bring into *England* any *Agnus Dei*, Crosses, Pictures or Beades, supposed to be hallowed or consecrated by the Pope, or by or under his authority, and offer to deliver them to the People, they incurre like penal-

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ty of premunire. Of all Jesuits, Seminary Priests, and others, deriving their authority from or under the Sea of *Rome*. All those that goe or send their Children over beyond Sea out of this Allegiance, to be resident in any house of Jesuits, forfeit 100l. Those that by word or otherwise, disturb the Preacher in his Sermon, the Ayders and Abetters of such Persons are to be imprisoned for three months, and thence untill the next Quarter Sessions, and then bound to their good behaviour; and if they refuse, then untill they will. If any malitiously strike, beate, or wound any Person with any weapon in any Church or Churchyard, or draw any weapon there to such purpose, in this case by conviction of twelve Men, or by the oathes of two lawfull Witnesses, the Offender shall have one of his eares cut off; and if he want eares, he shall be marked in the cheek with a hot-iron with the letter [*F*] in token he is a Fray-maker; this Statute was made in 5. *Edw.6.* a time of Reformation when the Gospel of peace was advanced, and we are in like times now, and had need take care that incouragement be given to those that will come to heare the glad tydings of their salvation. Of all perjury and subornation of perjury; all witch-craft, conjuration, and sorcery, invocation of any Spirit, or to consult, covenant with, entertaine, feed, imploy or reward any evill Spirit for any intent or purpose whatsoever, is Felony by the Statute of 1 *Jac. cap.* 12. and yet those were offences at the Common-law, as appeares by the Booke of 45 *Edw.3. fol.*17. and every of them, is *Malum in se*, (as in Law we call them) and so are many things against the Common-law in the same nature; although Statutes in such like cases adde to the punishment, yet makes not the offence, but were at the Common-law before Prophaning the Lords Day by sports or voluntary works, as Drovers in driving Cattle, Shoo-makers, and others by working or carrying home wares, this is the day which Christians ought to consecrate for the divine worship & honour of God, the duty of the first Table, wherein none other then the works of preservation and charity ought to

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be, as by the Gospel-example *in plucking eares of corne, and taking the Ox out of the ditch, &c.* All those that commonly use prophane cursing and swearing, those cock-brain'd and wanton Sinners that brings displeasure to the Hearers, and disprofit to themselves; they might be better Masters of their mouthes if they would think of *Gordius* the Martyr who when he was carried to execution, his seeming-Friends desired him to change his opinion; but he answered, The tongue ought not to speake any thing to the reproach of him that made it. Also, if any keep a House of common Bawdery, it is a horrid vice and breach of the peace; and the Common-law had alwaies conusance of that to punish it, and well it may; for, it is destructive to a Common-wealth, and the way to Hell through the Chambers of death, as *Solomon* sayes; and you know that Youth is the stock of the Common-wealth, and strength is the glory of the Young man, and wisdome the honour of the Aged; but this rots a Common-wealth at both ends: for, here the Young may loseth his glory, that is, his strength; and the Old man his honour, that is, his wisdome. The offences upon the second Generall; chiefly against the second Table: such as come to my memory, are these, within the conusance of a Sessions, petit treason, murthers, manslaughters, robberies, burglaries, thefts, rapes, sodomies, buggeries, and other such things, every one of which, the Common-law calls, *malum in se*, and reacheth the life of the Offender. Mayhems, batteries, riots, routs, unlawfull assemblies, extortions, frauds & deceits in measures in things measurable or in weights in things weighable, uttering of corrupt victuall or unwholsome beere: Anoyances in the high-wayes, & such things; every of which, is, *malum in se*, but reach only the corporall & pecuniary punishment, and not life. And then there are other things also within your conusans that are made offences by Act of Parl: which otherwise are indifferent in themselves, but so made for conveniences of times and Government, and are called, *mala prohibita*, and the rule that one remembers may well be applied in this case; namely,

namely, humane lawes are called temporall; for, although they be juſt, yet may they juſtly be changed according to the times, ſuch are Fore-ſtallers, Regrators, Ingroſſers, the Caterpillars of a Common-wealth in times of ſcarcity. And not mending of bridges, cawſyes, high-waies, eſpecially in this County where the wayes be ſo bad and deep, that things cannot be carried to the Market eaſily, and ſo helps to a Famine. Not ſcouring of ditches, or not taking away the drippers or buſhes in the high-waies. Hunting in any Forreſt, Parke or Warren in the night, or with Vizards or painted-faces in the day, is felony. Taking of Pheſants and Patridges with nets, or other engines, I ſhall not need to lay open the extent of all theſe, onely thoſe moſt difficult: Pettie-Treaſon is where a Woman, killeth or poyſoneth her Husband, or a Servant killeth or poyſoneth his or her Maſter or Miſtris; and ſo where Sonne or Daughter, living with the Father or Mother, kill or poyſons them, in caſe the Partie ſo offending be of competent age to know what he or ſhe doth, and be of ſound minde, not mad or lunatique; the Law intends obedience and truſt betweene the Parties, and therefore the offence is greater in eſteeme of Law than ordinary Murther. It hath beene held, that if a Baſtard kill its Mother, it is alſo Pettie-Treaſon; and reaſon, for the Law of Nature holds betweene them (though the Law of the Land thinke not of relation in point of right of ſucceſſion) and deprives priviledge. The rule of diſtinction both at common and civill Law, is *Sanguis naturalis, & ſanguis hereditarius & civilis*, The civill or hereditary bloud may be corrupt, but the naturall bloud cannot: And that old Booke makes it good, where the Mother was attainted of felony, and the Daughter kils her; this was pariſide, for they were Mother and Daughter, notwithſtanding the attainder, but the Daughter could not be Heire by reaſon of the attainder and corruption thereby of the Hereditary bloud, which bloud the Law creating is loſt and forfeited, and ſo Anceſtorſhip and Heireſhip, or that *jus ſucceſſionis*, as the Civilians call it, is gone. Murther muſt generally be where

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malice is fore-thought, yet in ſome caſes hot bloud will not excuſe; as if one on a ſuddaine without provocation, *Diabolica inſtigatione*, kils or poyſons another, for the Law preſumes malice. If an intent be to kill or poyſon one, and it happens on another. If the Sheriffe or other Miniſter of Juſtice in execution of his office upon another, be killed by him, it is murther in favour to the execution of Juſtice. If one comes to anothers Orchard or Houſe to robbe him, and the Owner rebuke or oppoſe him, and the Owner be killed, it is murther. If a Rioter, Router, or ſuch like, kill thoſe, or any in authority, comming to ſuppreſſe them, &c. is of like nature: Theſe are caſes out of the generall rule. All preſent, aiding, abetting or comforting, are principals, although but one gives the ſtroke, acceſſary is the Commander or Aſſenter not preſent. Stabbing with a Dagger, or other Weapon that is not uſually worne of a ſuddaine, is murther by the Statute of 1. *Jac.* And if any Bill of Man-ſlaughter come before you, and you conceive it will be murther by the evidence acquaint the Bench, that a Bill of murder may be preferred, That ſo crying a ſinne as murther may not goe unpuniſhed. Man-ſlaughter is in hot bloud, and with ſudden provocation ſo qualified by Law, becauſe of the generall paſſion and infirmity of men. Robbery is where any thing is taken from the Perſon of a man felonioufly. Burglary, is breaking of a dwelling-houſe, Church-wals, Towers or Porch in the night, with intent to commit felony, although they take nothing. If any put his foot over the threſhold, or any part of the houſe in the night to ſteale, it is burglary; but if it be to other intent then to ſteale, it is not burglary. It hath beene adjudged letting one downe a Chimney, although he breake not the houſe, if it be with an intent to ſteale in the night, it is burglary. Theft is taking away of another mans goods ſecretly, with intent or minde of ſtealing them. By the common Law a Servant entruſted with his Maſters goods, could not ſteale them, nor a Wife cannot ſteale from her Husband; here is no taking away, for the poſſeſſion was in them; but by the

Statute

Statute of 21. *H.* 8. a Cooke, Butler, Horſe-keeper, Shepheard, &c. intruſted with their particulars, and going away in a ſecret manner with them, are felons. Burning of a Manſion-houſe or Barn adjoyning to a Manſion-houſe, is felony. Rape is carnall knowledge of a female under ten yeares of age, or any other woman (of what age ſoever ſhe be) againſt her will. Sodomies & Buggeries, not to be named amongſt Chriſtians, but it is fit they ſhould be knowne, that they may not goe unpuniſhed; the one is that abominable and carnall poluti-on betweene mankinde; the other is by man with beaſt. Mayhems and Batteries, you know what they be. Riots, where three or more are got together to doe any unlawfull act, and doe it. An unlawfull Aſſembly, where they are got together to doe any unlawfull act, but doe it not. A rout, where they are gathered together without authority, meerly of their owne heads, and their intent is not knowne; or where they give out they will breake hedges or incloſures in a Towne, &c. theſe are in ſeverall degrees of offence and puniſhment. Extortion, where any Officer under colour of his office, extort beyond their Fee allowed by Law. You know what the frauds and deceits be by falſe meaſures, weights and ballances, either in corne, bread, beere, Millers in their tolls, or otherwiſe, ſelling of corrupt victuals, or unwholſome drinke, your skils and diligent cares are to know, and enquire them out. Butchers blowing of their meat with their breaths, no queſtion is within this branch; for many of them have unwholſome breaths, and the meat blown cannot be wholſome by whomſoever. The offences that are, *Mala prohibita*, are neglect in the high waies, what are neglects therin, and the manner of proceeding to thoſe amendments, are in the Statute of 2. and 3. of *Philip* and *Mary*, *&c.* And over-dripping with buſhes, trees or otherwiſe in high waies, are preſentable; and ſo not ſcouring of ditches. A Fore-ſtaller is where one buyes or cauſes to be bought, or contract for bargaines, or promiſeth to have any Merchandiſe, Victuals, or other things comming by land or by water towards any market or faire to be ſold; or ſhall by word, letter or o-

therwise, move to inhance the price, or dissuade any Person from bringing to the Market. A Regrator is he that buyeth and selleth in the same Market any Victuall or other things to be sold, or in any Fayre or Market within 4 miles. An Ingrosser is he that buyes corne or other provision of Victualls with intent to sell the same. For some others of this kind which are *mala prohibita*, I mentioned before. Onely. I did forget Ale-houses, the multitude of these I take to be the great bane of the Common-wealth, & I wish that the Justices would forbeare their licencing of them except in open Sessions, where exceptions of the Country may be taken against Person and place; here begins the seed or core of all mischief; hither resorts the Murtherer, Thiefe, Drunkard, Swearer, Curser, Adulterer, &c. and here is the Devils Free-schoole, here was the birth of that Monster which hath almost destroyed this Nation, (I meane Drunkennesse.) It is strange that it should be fostered here when almost all other Nations would not suffer it to enter; the *Moores* to keep their Children from this vice, tells them, That there was a Man of an austere course of life, and the People being all lewd about him, would compell him to commit one of three crimes, and for that purpose they set before him *a Bottle of Wine, a Sword, and a Woman*; and he did chuse the Bottle of Wine, as the least; which being dranke up, he assaulted the Woman; but being opposed, he takes the Sword and kils the Opposer, and then acts the other; and so committed by Drunkennesse all three. I read that the *Romans* resolved warre against the *Sarmates*, and *Lutius Pius* was created Consul, and appointed for this expedition, and had various and long worke with them, and concluding truce; having diverse times banqueted the chief Captaines of the *Sarmates*, and perceiving them liquorously given to Wine, at last made them a bountifull Feast where was plenty of Wine; and they in their drunken humour, yeilded their Province tributary to *Rome*: the Wars being concluded, and the Consul returning to *Rome*, demanded Triumphs usuall for Victors, which was not only

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denied him by the Senate, but the forme of his Victory was so abhorred, that publickly they put him to death, and for his greater defamation made this Epitaph upon him, [*Here lies the Consul* Lutius Pius, *who not by Armes in Field, but by Carousing at his Table, not by the Launce, but by plenty of Wine conquered the* Sarmates:] And in further disgrace, caused publickly to be proclaimed throughout *Rome*, That whatsoever had been won in the *Roman Peoples* name by *Lutius Pius* should be accounted as nothing: And wrote moreover to the *Sarmates*, that they denied any conquest of them, but referred them to their former priviledges and liberties. I call thus much to mind to stirre up your consideration to all things, and leave them & what other things I have forgotten, and may come to your memories usefull for you, to your care and diligence.

The other Charge upon the Commission of Sewers.

GEntlemen that are summoned, impannelled & sworne on these two Juries, It may be expected by reason of the consequence to the Common-wealth, and the seldome actings in these affaires, that I should be tedious in what I have to say, but I shall order it otherwise seeing you knowing Men: As when I meet with understanding Travellers, I can as well point them out the way with my finger as if I traversed the ground with them my selfe: So I shall deale with you at this time in the sense of my mind; I shall onely remember you of the chief heads and caracters, rather then coast about all the particulars of your Charge: And in that also I shall goe the plaine and ordinary course

in all buſineſſe of weight: Firſt, to looke at the end and object-matter; and then the authority or circumſtance: Firſt, the legallity and juſtneſſe of the thing; then the waies or meanes to effect it: you know *prius intelligere & deinde accedere ad opus*, firſt to underſtand, and then to proceed to the work, is an old and a ſure Adage; and if precept and cuſtome were wanting, common reaſon would teach us the uſe of it; for the mind is the ciſterne, and outward action and ſpeech is but the cock; therefore it is fit we ſee what water is in the ciſterne before we let the cock goe: and much agreeing to this is *Solomon*, who ſaith, *That the heart of a Foole is in his mouth, but the mouth of the Wiſe is in his heart*, ſignifying thus much unto us, that the true coyne of all outward actions muſt firſt have their ſtamp in the mind and underſtanding. Gentlemen, the end and object-matter of your imployment, is, the good and benefit of the Common-wealth, and for the preſervation of this our Iſland in the ſuppreſſing or wel-ordering of that cruell and raging enemy, *Water*, be it by Sea or freſh Rivers, I meane in the overflowing or exceſſe of it: Our duty extends it ſelfe to thoſe that are either publique or private, and becomes theirs: It concernes every one in his particular care, but much more thoſe in Government or Authority. In the Ship care lies upon the meaneſt Mariner, but more in the Maſter or Pilot by reaſon of the addition of truſt repoſed by others in them; and ſo in the Ship of the Common-wealth, the greateſt care ought to be in the Magiſtrates, and thoſe in publique employment to keep it from ſinking or deſtruction: We read in very antient Hiſtories, this rule given them, *Videant Conſules & cæteri Magiſtratus ne quid detrimenti capiat Reſpublica*, that Magiſtrates and Governours ſee to it, that no loſſe, damage, or prejudice by their neglect accrewes to the Common-wealth. And if thoſe Hiſtories ſpeak truth, this was ſuch a hold-faſt to Governors to defend the Peoples Liberties, and the Common good, that if by no other meanes they might performe their truſt, they might doe it by taking up armes even againſt *Cæſar* himſelfe

himselfe. The conusans of Sewers was naturally and originally in the Common Law of the Land before any Statute. And so we may find by the 10. *Rep.* in the Case of the *Isle of Ely*, and in Sir *John Davyes* his Irish Reports in the Case of the Royall pischarie of *Banne*, and in the Register, and in *Nat' Br. fol.* 113. They agree, That the KING in common justice ought, (I say not by grace and favour) but in justice to issue out Commissions to regulate these defaults: And if Authorities were not in the point that the Common Law originally had conusans, the reason of Law would teach it, for it is a generall rule and maxime therein, That what is destructive to the Common-weale or Land, or is to the generall corruption of the good life and manners of the People are offences against the Law, and punishable & remediable thereby; and this agrees with a fundamentall and generall rule of humane Lawes; *Omnia quæ Reipublicæ sunt salutaria legittima semper, & justa habentur*, all things beneficiall to a Common-wealth are accounted lawfull and just. But, I conceive, all are well satisfied with the object-matter of our imployment, and that it is compleat & quadrate, in that it is a work, *bonum, & justum, salus populi, securitas Reipublicæ*, it is just and honest, beneficiall for the People, and safe for the Common-wealth. But some are not satisfied with our Authority, whereby we act and doe these things: And yet they grant, that a Commission under the Great Seale of *ENGLAND* is of that great esteeme by the Law, that it is a Record, That the Commissioners therein are Judges of record; That the proceedings thereof are also matters of record, and therefore ought to be committed to writing, and not be acted by words onely, as it is in *Nat: Br:* in his Writ of surety of the Peace, and 8. *Rep.* in Doctor *Bonhams* case, and as appeares by the Booke of 10 *H.* 7. *fol.* 17. And they will also grant us, that the Great Seale of *England* is of such honour and height, that it cannot directly be (in course of pleading at Law) traversed or denied; but if you will impeach it, you must goe modestly to worke, as to doe

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it by a *non concessit*, *&c.* as in *Plowdens* Comment, *fol.* 232. in the Lord *Berklies* case, and 6. *Rep.* in *Edens* case. And yet I say they are not satisfied with our authority, and take these three exceptions against our Commission and Seale. First, that the Stampe or Effigies of the Seale is new. Secondly, against the hand or power by which the Stampe or Effigies is made. 3. The Commission, *Custod. Libertat. &c.* is new in forme, and darke in phrase, and not to be understood. Although it were no contemptible answer to all these exceptions, that what is just and honest for a man to doe, it will never offend his conscience to performe, in case he did it without a publique authority, or by an invalid authority, which is equivalent and all one with none at all, and the rather and especially it will be no offence to conscience, when as no authority appeares countermanding or prohibiting him: Yet this shall not be set down by, but every particular exception shall have its visible or rationall answer severally. First, the Stampe or Effigies of the Great Seale have beene often changed, as you may see if you looke no further then *Speeds* Historie, where sometimes the Crosse and other Effigies in severall times doe appeare, and where their varieties are painted. The Effigies is not the vertue of the Seale: But the honour and vertue of the Great Seale is, because it passes all Originall proceedings of Justice, and is the signall or testimoniall whereby they are knowne; As also passes all publique instruments of Government and State, and it alwaies lies at the open fountaine of Justice, where the People without any stoppe may have it for their helpe and reliefe. And therefore it is called the Great Seale of *England*, and not of any King or particular Person; And if so, why is it incongruous to have the whole People represented in the Effigies of their Representative, the House of Commons. Secondly, the hand or power that stampes or causes this Effigies, are such who at the beginning were in a Parliamentary way elected by the People to establish or repeale Lawes. Are such as have severall times protested deeply with their lives and fortunes to defend the Fundamentall

mentall Lawes of the Land, and the jnſt rights and Liberties of the People (which in reality, are the Lawes of the Land, being their Birthrights.) Are ſuch, as when the Authority was ſo, that no queſtion was of it, had a Grant from that Authority not to Diſſolve untill they would themſelves; which they have not yet determined. Are ſuch as ſit *in ſolio Juſtitiæ*, in the forme, way, and Councell of Juſtice: and you know what priviledge and addition *Moſes* Chaire gave even to the Scribes and Phariſees, and who it was that ſaid, *Heare them there.* But beſides all this, ever ſince God made all things out of nothing, and order out of confuſion; every Man or Creature in this Creation by Divine precept, nature, and reaſon, is to baniſh and oppoſe confuſion. Hence it comes, that Government it ſelfe is of Divine Right (if reaſon may judge) becauſe it is the onely banke againſt confuſion, and there is no Government without order: and God by his patterne of the little world [Man] hath ſhewed more lively what the great one ſhould be, or all Common-wealths in it: as in the body naturall there are degrees in members, the head, the armes, ſome ſuperiour, others inferiour: So it muſt be in the body politique of the Common-wealth, in the Governours and Members of it there muſt be Government by Superiority and Subordinacy: Hence it came to paſſe that ſome who were in publique imployment before the late changes (and who doe not love to borrow other Mens eyes to ſee by in a buſineſſe of ſuch weight (but to ſee by their owne ſo farre as their light will carry them) or to follow example further then they ſee it agree with rule and meaſure) conceived it conſcience to proceed in Government, conſidering that conſcience muſt be grounded upon theſe foundations or principles; namely, Gods law or will where it is manifeſted or expreſſed, and where Gods word doth not manifeſt the thing. Reaſon upon good principles muſt work out conſcience, and what is under or below reaſon, is will, pleaſure, &c. and not conſcience: It is no ground to ſay, it is my conſcience, becauſe it is; and ſuch like fondneſſes: *Conſci-*

entia eſt infra Deum, & ſupra homines, it is below and liable to Gods wil, but it is above Mans. I ſay upon theſe grounds, and not upon feare or flattery of times or Perſons, as ſome have ſcandalouſly imagined: Did theſe Gentlemen conceive in conſcience they ought not to deſert Government. As alſo by the ſame reaſon, that one might give it over a ſecond, a third, and ſo by conſequence all might deſert Government, and then would come that horrid and loathſome monſter, Confuſion; which by the law of God, of nature, of reaſon, they conceive themſelves in duty even to the breach of their fortunes, ſhoulders, ſtrengths and lives to expell. Thirdly, either the Exceptors are much miſtaken, or that antient, learned, and famous Hiſtorian, *Livy*, in his Second Booke; and that deeply ſtudied Lawyer in Antiquities and other ſtudies, *Boden*, in his Third Booke of his Common-wealth are falſaries and forgers; for, by them it appeares, That the *Tribunes* amongſt the old *Romans* were called, *Cuſtod' libertat' Populi plebiſq; Romani*, The Keepers of the Liberties of the People: So then the forme is not new, nor is the phraſe darke; for theſe Authours have drawne the curtaine, and made appeare that to be a faire ſpatious roome which was conceived a cloſe and darke corner; And there the Honour and Authority of thoſe Keepers of the Liberties of the People are much to be ſeene: And as the Lawes with them were the Peoples Liberties; So our Lawes with us are the Liberties of *England*, as *Magna Charta* calls them: And they having from time to time ſpent this Nation ſo much treaſure, blowes & blood to preſerve them; theſe jewels are now fit to be kept in the boſome and ſtrong-hold of a Parliament and People, or be lodged where they may truſt them. And now Gentlemen, if the thing be juſt, and the Authority valid, we ought to aſſume the truſt upon us relating to Law and Government, and the ſacred bonds of our Oathes, we muſt perform it with ſincerity and faithfulneſſe, and with wiſdome and circumſpection in the matter, and with diligence in the manner of our proceedings; wiſdome is to foreſee errors

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and Evills before they be committed, or if once committed ſuddenly to amend them; diligence hath reference to the Body & mind: In the Mind, it is ſtudy and meditation; in the Body, it is labour and action; Diligence zealouſly and affectedly purſues its ends and aimes: And wiſdome foreſees and removes all lets and hindrances. If wiſdome hath not ſtrength to ſee the Rockes and Gulfes of anger, fear, favour, private ends, flattery, bribes, and ſuch like, and to remove them; diligence will ſoon be blockt up, beſieged; and ſtreightened, ſo wiſedom and diligence are good Concomitants, and are well matched together, and yet in degree and order the one ſuperiour, the other ſubordinate. It is a fiction, but taken up by the Philoſophers, that the goddeſſe Wiſedome was the chiefe of the councel of the gods; and that Fortune envying the others glory and honour, did attribute that to her lot, which was gained by the others providence; whereat the gods were ſo angry, that they ever after caſt that raſh, giddy and wanton goddeſſe, Fortune, out of their councels; ſignifying unto us, that in weighty matters we muſt be ſerious and knowing, and not put things raſhly to lot or hazard. And now ſeeing the thing is juſt, the authority valid, and the truſt aſſumed, it is fit ſome of the particulars of our worke ſhould be laid open and unfolded, wherewith theſe are all cloathed: I ſhall put you in mind, that *England*, as Geographicall Hiſtorians ſay, is a compleat Iſland in all parts but towards *Scotland*; and therefore this our Commiſſion of Sewers very requiſite, and the ſtatutes upon which this Commiſſion is grounded, are liberally and beneficially to be expounded, for the furtherance of the work, *pro bono publico*, and are of large extent reaching to perſons, actions, and things, *viz.* To perſons who they be that are to be puniſhed, or releived. 2. To actions, what muſt be done for the ſuddeneſt, and beſt amendment, and in what manner by timber, &c. Carts, Horſes, &c. 3. To things either to thoſe of offence, or thoſe of defence. All that are annoyances, lets, offences, impediments in themſelves are to be ſuppreſſed, as Streames, Mils, Bridges,

Ponds, Fish-garthes, Mil-dams, Hebbingweres, Hecks, and Flood-gates: And all those that are helps, or defences, are to be nourished, and maintained, as Walls, Banckes, Ditches, Gutters, Shewers, Goates, Calcies, Bridges, &c. I shall not lay open particulars any further, the Commission is much expressing in it self. I desire your care and consideration of what you know: and as you shall find these particulars, or any others necessary in this businesse present them. I told you at first, I should not recount all the particulars of your charge presuming on your knowledge and experience: And so without further expence of your time, I leave you to your work.

FINIS.

The Stationer to the Reader.

READER,

I Must acknowledge my Copie is at the second hand; for, the Authour upon request delivered a Copie to a worthy Friend of his, My Friend had accesse thereto and Copied out mine. And although at first the Authour was opposit, yet now to prevent mistakes in Copies to his injury, assents to the proceed of the Presse.

TREAS
ROOM